

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6107

Petition of Green Mountain Power Corporation)
requesting a 12.9% rate increase, to take effect)
June 22, 1998)

Order entered: 9/7/99

ORDER RE: EXTENSION OF STAY OF PROCEEDING
AND TEMPORARY RATES

I. INTRODUCTION

With today's Order, we grant the joint request of the Parties to extend the pending stay of this proceeding until December 15, 1999, and to continue the temporary rate increase now in effect through March 31, 2000. With the extension of temporary rates granted today, Green Mountain Power Corporation ("GMP" or "the Company") is expected to collect approximately \$13 million in revenue above pre-existing base rates under the Memorandum of Understanding ("MOU"), this MOU Amendment, and the associated Pine Street surcharge¹ between January 1, 1999, and March 31, 2000. Continuation of this temporary rate increase is intended to maintain the Company's continuing ability to deliver high-quality, safe and reliable electric service to its customers, and to maintain the financial viability of the Company pending the establishment of final rates in this case.²

1. The Board's December 11, 1998, Order approved a 5.7% temporary rate increase to raise approximately \$9,190,000 in additional revenues. On December 15, 1998, the Company filed a compliance filing establishing an increase of 5.52% to achieve a revenue target of \$8,918,000. This change was made to account for the effect on GMP's pre-existing permanent rates of the Board's Order on Reconsideration in Docket No. 5983. Thus, the actual temporary rate increase implemented by GMP is 5.52%, and the cumulative increase authorized since March 1998 is 9.6%, excluding the temporary Pine Street surcharge.

2. The extension of temporary rates will GMP approximately \$3.3 million in additional revenue between December 15, 1999 and March 31, 2000, and will maintain the Company's access to working capital during that period. Under the MOU and the extension approved today, GMP projects after-tax earnings during 1999 of \$5.7 million.

The Public Service Board ("Board") has conducted a careful inquiry into the details and consequences of extending the temporary rates. The parties have contended, and we concur, that the extension of the stay of proceedings and continuation of temporary rates will serve the several, complementary purposes of ensuring the Company's ability to deliver safe and reliable electric service to its customers (including the capability to respond to emergency situations), maintaining the Company's financial viability, and allowing the Company, the Vermont Department of Public Service ("Department"), the Board, and others to continue to devote their time and resources to on-going power cost mitigation efforts rather than to contested rate case proceedings. Based on these expected benefits, the Board concludes that approval of the MOU Amendment will promote the public interest.

Negotiations to modify the terms of the power purchase agreement between the Vermont Joint Owners ("VJO") and Hydro-Quebec ("HQ") commenced almost a decade ago, and, to date, have yielded only modest relief to Vermont ratepayers. Since these negotiations began, power markets throughout North America have been transformed; power supply arrangements have been restructured to an unprecedented degree, and costs are declining throughout this region and the country. For several years the Board has supported negotiations with Hydro Quebec in the expectation that they will produce power supply reforms that will enable Vermont to keep pace with regional and national trends in market transformation. This extension is granted with that expectation in view. However, it is not in the best interest of Vermont ratepayers, the Vermont economy, or Vermont's utilities to defer indefinitely the decisions that are necessary to reform our power supply and its cost structure.

Thus, while we conclude that it is reasonable to extend the temporary rates at this time, we cannot assure that this temporary rate increase will be extended further, absent a showing of good cause. As requested by the parties, a status conference will be held on December 10, 1999, to chart further progress in this Docket.

II. BACKGROUND AND PROCEDURAL HISTORY

On December 11, 1998, the Board approved an MOU submitted jointly in this docket by GMP, the Department, and International Business Machines Corporation ("IBM") and stayed this proceeding until September 1, 1999. The Board also approved a temporary rate increase of 5.7% and an additional temporary rate surcharge to raise approximately \$670,000 in additional revenue to finance

estimated 1999 expenditures for remediation of the Pine Street Barge Canal Superfund Site.³ (GMP has not yet instituted the Pine Street surcharge described in the original MOU and approved by the Board last December because the Consent Decree governing remediation of the Pine Street Barge Canal Superfund Site had not, as of August 30, 1999, been executed by all parties.)

On August 12, 1999, GMP, the Department, IBM and Vermont Public Interest Research Group (“VPIRG”) filed for our approval an Amendment to the MOU (“MOU Amendment”), jointly requesting the Board to extend the stay for approximately three and one-half additional months, until December 15, 1999, to extend the deadline for a final rate order until March 31, 2000, and to continue the temporary rates during the extended stay period. Intervenor American Association of Retired Persons (“AARP”) indicated that it has no objection to the MOU Amendment by letter to the Board dated August 24, 1999.⁴ GMP prefiled testimony in support of the MOU Amendment on August 17, 1999.

The purpose of the stay extension contemplated in the MOU Amendment is to permit GMP to continue to focus management and resources on on-going power supply cost mitigation efforts and other cost reduction initiatives such as internal reorganization and associated cost-cutting measures. These efforts include on-going contract restructuring negotiations with Hydro-Quebec, and a pending contract arbitration proceeding brought by the Vermont Joint Owners against Hydro-Quebec arising out of the 1998 ice storm.

The Board convened a technical hearing on the MOU Amendment on August 30, 1999. At the hearing, the Board heard the testimony of GMP's witnesses, Nancy R. Brock, Vice President, Chief Financial Officer and Treasurer of GMP, and Anthony J. Kvedar, Jr., Energy and Financial Analyst for GMP. No other parties offered testimony or evidence. The Department's position is that GMP's testimony and evidence adequately supported approval of the MOU Amendment. VPIRG and IBM have stated their support for approval of the Amendment. At the hearing, the Board granted an interim extension of the stay of this proceeding pending issuance of today's Order.

3. Order of 12/11/98.

4. The only remaining parties to the Docket, the Vermont Ski Areas Association, Inc., and the Vermont Electricity Consumers Coalition have not opposed the MOU Amendment.

III. THE MOU AMENDMENT

The MOU Amendment⁵ provides, among other items, that upon Board approval this docket would be stayed until December 15, 1999, that the deadline for the Board's decision on final rates would be extended until March 31, 1999, and that the existing temporary rates would remain in effect pending a final rate decision. The MOU Amendment further provides that the Board may extend the stay for an additional three months after December 15th, upon a request by any party, made no later than December 3, 1999, and upon showing of good cause. If the stay is extended beyond December 15th, the deadline for a final rate decision would also be extended by an equivalent period and existing temporary rates would remain in effect until a final order is issued. The MOU Amendment contemplates a status conference in the case between December 3 and December 10, 1999, at which GMP would be required to report to the Board on the status of its on-going power supply cost mitigation efforts.

The Pine Street surcharge approved by the Board last December would be collected as originally approved, but would terminate on December 31, 1999.⁶

As agreed in the original MOU, and as previously ordered by the Board, the temporary rates would remain subject to refund, if the Board's final order in this docket establishes rates that are lower than the temporary rates.

The MOU Amendment also establishes a schedule for resolution of the case regarding final rates in this docket. In addition, GMP has agreed not to file, prior to December 15, 1999, a petition for any further increase in retail electric rates, although it may, if it deems necessary, file for temporary rate relief under 30 V.S.A. § 226(a).

IV. FINDINGS OF FACT

1. In the seven months since the Board approved the original MOU in this case, GMP has engaged in a series of efforts to mitigate its power supply costs, reduce other operational expenses and improve operations. These efforts, which are ongoing, include power supply contract restructuring

5. The MOU Amendment is attached to this Order as Appendix 1.

6. The total rate increase after implementation of the temporary Pine Street surcharge will be slightly less than the levels originally approved by the Board, and will be as reflected in the Company's December 15, 1998, compliance filing with the Board.

negotiations with HQ and other third parties; the VJO-HQ ice storm arbitration proceedings, which commenced hearings in Burlington on August 31, 1999; negotiations for the sale of Vermont Yankee; and implementation of a corporate reorganization initiative. The Company seeks an extension of the stay of proceedings pursuant to the MOU Amendment to allow its management to continue to focus on these on-going cost reduction initiatives. Brock/Kvedar pf. at 5-7.

2. If the Board approves the MOU Amendment, GMP will continue to collect revenues pursuant to the temporary rates approved last December. If the final rates set by the Board in this docket are less than the temporary rates, GMP will refund any excess revenues collected under the temporary rates pursuant to the original MOU. Brock/Kvedar pf. at 3-4.; see MOU Amendment ¶ 10.⁷

3. The extension period will yield to GMP, between December 15, 1999, and March 31, 2000, additional revenues of approximately \$3,300,000.⁸ Exhibit GMP-44.

4. Under the provision of the MOU Amendment, the Pine Street surcharge will be collected as provided in the original MOU and as previously approved by the Board.⁹ MOU Amendment ¶ 7; Brock/Kvedar pf. 4. However, at the hearing GMP requested that the Pine Street surcharge terminate at the end of 1999, instead of December 15, 1999, as originally provided.¹⁰ As provided in the original MOU, the Pine Street surcharge does not constitute recovery of any Pine Street expenditures and establishes no precedent for ratemaking treatment of such costs. Moreover, the MOU Amendment

7. The MOU Amendment was entered into the record as one of three documents included in exhibit GMP 44; for clarity and ease of reference, citations in these findings refer to the MOU Amendment rather than to the corresponding exhibit number.

8. The Board's December 11, 1998, Order approved a temporary increase expected to yield approximately \$9,190,000 through December 1999. Order of 12/11/98, at 1.

9. Pursuant to the Board's Order of December 11, 1998, GMP has notified its customers of the possible imposition of the Pine Street surcharge.

10. The MOU Amendment calls for termination of the Pine Street surcharge on December 15, 1999. GMP explained to the Board at the August 30, 1999, technical hearing, however, that the termination date should be December 31, 1999, to ensure that the surcharge is equitably distributed to all GMP retail customers and to permit GMP to collect the full \$675,000 intended by the parties. Tr. 8/30/99 at 107-108. No party objected to this correction. Tr. 8/30/99 at 109. In today's Order, we approve this change in the termination date for the Pine Street surcharge.

does not preclude the parties from litigating issues regarding recovery and sharing of final Pine Street costs at the appropriate time. MOU Amendment ¶¶ 10-11.

5. The Company provided evidence regarding its expenditures and cost recoveries related to Pine Street Barge Canal remediation. GMP did not present a witness familiar with the details of the Pine Street accounts, transactions and projections. Much of the information was provided under seal.¹¹ Tr. (under seal) 8/30/99 at 79-106 (Brock/Kvedar).

6. Based on GMP's forecasts of 1999 and 2000 cash flows and earnings, continuation of the temporary rate increase should provide GMP with additional revenues sufficient to permit the Company to provide its customers with adequate and efficient service through March 31, 2000, and to preserve the Company's financial viability during that period. Brock/Kvedar pf. at 8. These forecasts were reviewed by the Department, and reflect the best information available to the Company. Brock/Kvedar pf. at 9-10; exh. GMP-44 at NRB/AJK-3; tr. 8/30/99 at 68-69 (Brock/Kvedar).

7. The Company estimates that, under these rates, it expects to earn \$5.7 million after income taxes. The Company estimates that its core (i.e. regulated utility) business will earn \$0.86 per share of common equity during 1999. Exh. GMP-44.

8. According to GMP, even with the temporary rate increase contemplated by the MOU, the Company will still need to borrow funds in 1999. Exh. GMP 44, at exh. MOU-NRB/AJK-2, page 10 of 28; tr. 8/30/99 at 69 (Brock and Kvedar).

9. The Company currently maintains a credit facility with Fleet Bank under a Revolving Credit Agreement ("Revolver"). This line of credit is currently the Company's principal external source of working capital. Tr. 8/30/99 at 71-73 (Brock/Kvedar); exh. GMP-46.

10. With the cash flows and coverage ratios provided by a continuation of the temporary rates, GMP believes it can present to its banks a reasonable case for maintaining the credit facility through March 31, 2000. Brock/Kvedar pf. at 13-14.

11. The Company will rely upon the Revolver until March 2000 to fund operations and make necessary capital investments in its core utility business. Tr. 8/30/99 at 69-73 (Brock/Kvedar).

11. The Company has not adequately supported its request that this information continue to be held under seal. The Company is directed to file with the Board a proper justification for continued confidential treatment of this information or a statement that confidential treatment is no longer required.

12. GMP testified that continuation of the temporary rates will allow the Company to continue to demonstrate adequate cash flows such that GMP could maintain its line of credit through March 2000. Brock/Kvedar pf. at 13.

13. The continuation of the temporary rate increase set forth in the MOU Amendment, including the Pine Street surcharge, is necessary to enable GMP to maintain cash flows and a *pro forma* earnings-to-interest ratio necessary to provide GMP with the technical capability to issue first mortgage bonds through March 2000. Brock/Kvedar pf. at 12.

14. The continuation of the temporary rates will enable GMP to maintain a *pro forma* earnings-to-interest ratio of 2.0. Tr. 8/30/99 at 77.

15. The Company does not plan to invest any money in its unregulated activities in 1999. Tr. 8/30/99 at 77. (Brock and Kvedar).

16. The cash flow analysis accounts for the implementation of an energy efficiency utility in 2000, pursuant to a Memorandum of Understanding joined by all utility parties in Docket No. 5980 and a Bilateral Agreement between GMP and the DPS in that docket. The Docket No. 5980 MOU and Bilateral Agreements in that docket are under consideration by the Board. The cash flow analysis also accounts for GMP's anticipated funding of current DSM programs through the end of 1999 in accordance with the parties' agreements in Docket No. 5980. Tr. 8/30/99 at 24-32 (Brock/ Kvedar).

17. The temporary rate levels provided in the MOU Amendment should be sufficient to allow the Company to support an adequate level of capital expenditures for 1999. Exh. GMP-44, at exh. MOU-NRB/AJK-2; tr. 8/30/99 at 77 (Brock/Kvedar).

18. Approval of the MOU Amendment should allow GMP to provide safe, reliable, adequate and efficient service and should permit the Company to respond to emergencies in the normal course of business. Of course, in the event of a severe weather emergency or other unforeseen occurrence, the Company might require, and could seek, additional temporary rates. Tr. 8/30/99 at 41, 47-48 (Brock/Kvedar).

19. GMP expects to expend the \$1 million in additional revenues provided under the original MOU on an enhanced program of right-of-way maintenance and pole testing and treatment, which is currently being conducted in accordance with plans developed in consultation with the engineering staff of the Department. The amended MOU would require the Company to continue to make necessary

expenditures on right-of-way activities for the pendency of the temporary rates. Tr. 8/30/99 at 56 (Brock/Kvedar).

20. Approval of the MOU Amendment should not require GMP to recognize a loss under Financial Accounting Standard ("FAS") No. 5 related to HQ Contract disallowances for periods beyond the conclusion of this proceeding. Nor does approval of the MOU require GMP to cease applying FAS 71 with respect to regulatory assets. Brock/Kvedar pf. at 15.

21. By staying the current proceeding until December 15, 1999, approval of the MOU Amendment will allow GMP and others, including the Department and the Board, to direct more time and resources to efforts to lower the state's power supply costs. Such efforts will serve the interests of the Company's ratepayers and shareholders, and of the public in general. Brock/Kvedar pf. at 7-8, 15-16.

V. DISCUSSION

As we explained in our December 11, 1998, Order approving the original MOU, the applicable standard of review of a request for temporary rates is that set forth in 30 V.S.A. § 226(a), which provides that the Board shall approve a request for temporary rates:

. . . if it shall be made to appear to the satisfaction of the board, that the public interest requires a change in rates, charges or services, or that such change is necessary for the purpose of providing adequate and efficient service or for the preservation of the property of the public service company devoted to public use,

. . .

Based on the evidence presented, we conclude that the proposed extension of the stay of proceedings and continuation of the existing temporary rate increase should provide the Company and other involved parties the necessary opportunity to continue on-going efforts to address the high power costs facing Vermont's electric utilities, maintain the financial viability of the Company until final rates are established in this case and ensure the continued delivery of safe and reliable electric service to GMP's customers. Accordingly, we conclude that the public interest requires the continuation of the temporary rate increase we approved last December, and we therefore approve the MOU Amendment.

In approving the MOU Amendment, today's Order neither creates any precedent for this or any future proceeding, nor constitutes any finding or order that any costs are recoverable in rates.¹²

12. See MOU Amendment at ¶¶ 11 and 12.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Amendment to Memorandum of Understanding among Green Mountain Power Corporation, the Vermont Department of Public Service, International Business Machines Corporation and Vermont Public Interest Research Group, dated August 12, 1999, is approved.

2. GMP is entitled to continue to collect temporary rates at the same level as GMP put into effect on a service-rendered basis on December 15, 1998. GMP is also entitled to implement the additional temporary surcharge approved by the Board in its December 11, 1998, Order approving the original MOU, if during 1999, GMP executes a Consent Decree with governmental parties for remediation of the Pine Street Barge Canal Superfund Site. This Pine Street surcharge, if implemented, shall take effect on the first day of the month following execution of the consent decree and shall terminate on December 31, 1999.

3. The temporary rates shall remain in effect until the Board issues a final order in this docket, subject to any further request by GMP for emergency temporary rate relief. In the event that the Board issues a final order that allows a rate increase less than the temporary rates ordered herein, all sums collected in excess of such final rates shall be refunded by adjusting revenue requirements and rates on a prospective basis, by customer class, to reflect the appropriate refund amounts. GMP shall not be required to post a bond or letter of credit.

4. Within five days of the execution of a Consent Decree concerning Pine Street remediation, GMP shall file a compliance filing with the Board and the parties consistent with the MOU, the MOU Amendment and this Order.

5. By September 13, 1999, GMP shall file a proper justification for continued confidential treatment of information regarding Pine Street remediation costs and collections, or a statement that confidential treatment is no longer required.

6. By September 13, 1999, GMP shall file a confirmation, or if appropriate a correction, of the information provided in Exhibit GMP-47.

7. This docket is stayed until December 15, 1999, at which time the Board will resume this proceeding in accordance with the schedule proposed in the MOU Amendment. During the stay and,

to the extent applicable, thereafter, the terms of the MOU and MOU Amendment will govern the conduct of the parties with respect to these proceedings and matters at issue in these proceedings.

8. Upon a showing by any party of good cause for further extending the stay after December 15, 1999, the Board may order the stay extended for a period of up to three additional months, or until March 15, 1999. Any such request for further extension of the stay shall be filed by a party no later than December 3, 1999.

9. The Board will schedule a conference with the parties on December 10, 1999, to be confirmed by subsequent notice, to review the status of this matter. GMP shall report to the Board at such status conference on the status of its power cost mitigation efforts, as provided in paragraph 6 of the MOU Amendment.

10. This Order does not constitute a finding or order that any costs included in GMP's support for this temporary rate increase are recoverable in rates or should receive any particular rate treatment in this or any future proceeding. The method used to determine these temporary rates shall not be construed as an appropriate means of determining final rates. This Order constitutes a determination pursuant to 30 V.S.A. § 226(a), after preliminary hearing, for the purpose of establishing temporary rates only. Regarding the establishment of permanent rates, nothing in this Order, including the findings of fact and conclusions, shall bind the Board or the parties or have any *res judicata* or collateral estoppel effect except as necessary to implement the MOU and the MOU Amendment and to enforce this Order.

DATED at Montpelier, Vermont, this 7th day of September, 1999.

s/ Richard H. Cowart)
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)
s/ Suzanne D. Rude)
)
)
s/ David C. Coen)

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

Filed: September 7, 1999

Attest: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.